

U.S. COURTS

04 OCT 15 PM 3:49

REC'D \_\_\_\_\_ FILED \_\_\_\_\_  
CAMERON S. BURKE

CLERK, IDAHO \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

KIMBERLY SMITH, MICHAEL B. )  
HINCKLEY, JACQUELINE T. HLADUN, )  
MARILYN J. CRAIG, JEFFREY P. )  
CLEVINGER, and TIMOTHY C. )  
KAUFMANN, Individually and on Behalf )  
of those Similarly Situated, )

Plaintiffs, )

v. )

MICRON ELECTRONICS, INC., )  
a Minnesota Corporation, )

Defendant. )  
\_\_\_\_\_ )

Case No. CV-01-244-S-BLW

**ORDER**

Pending before the court are Defendant Micron Electronics Inc.'s Motion for Partial Summary Judgment Re: Payment of Commission Premiums for Overtime (Docket No. 179), Defendant Micron Electronics Inc.'s Motion to Strike Consents and to Dismiss Claimants (Docket No. 189),<sup>1</sup> Defendant's Micron Electronics

<sup>1</sup> This motion is withdrawn as to Julie Gardner, as defendant indicated in its reply brief.

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Inc.'s Motion For Partial Summary Judgment Re: Plaintiffs' Claims of Altering Employees' Timecards (Docket No. 199), Defendant Micron Electronics Inc.'s Motion to Strike Consents and Dismiss Claimants Destiny J. Baxter, Don Hopkins, and Camille Woodworth (Docket No. 229), Defendant Micron Electronics Inc.'s Motion to Strike Plaintiffs' Statement of Material Facts Filed in Opposition to Micron Electronics Inc.'s Motion for Partial Summary Judgment Re: Statutes of Limitation (Docket No. 242), Plaintiffs' Motion to File Overlength Statement of Material Facts (Docket No. 258), and Defendant Micron Electronics Inc.'s Motion to Strike Plaintiffs' Statement of Undisputed Facts in Support of Plaintiffs' Motion for Summary Judgment (Docket No. 266).

The Plaintiffs indicated their non-opposition to most of these motions by filing a written statement under Local Rule 7.1(a)(1)(5). Local Rule 7.1(f) provides that failure to file a responsive document "may be deemed to constitute a consent to the . . . the granting of said motion." D. Idaho L. Civ. R. 7.1(f). Plaintiffs did not file a response to Defendant Micron Electronics Inc.'s Motion to Strike Plaintiffs' Statement of Material Facts Filed in Opposition to Defendant Micron Electronics Inc.'s Motion for Partial Summary Judgment Re: Statutes of Limitation (Docket No. 242) or to Defendant Micron Electronics Inc.'s Motion to Strike Plaintiffs' Statement of Undisputed Facts in Support of Plaintiffs' Motion for

Summary Judgment (Docket No. 266). Although plaintiffs did seek leave to exceed the page limit for their statement of material facts submitted with their opposition to Defendant Micron Electronics Inc.'s Motion for Partial Summary Judgment Re: Statutes of Limitation, plaintiffs did not address any of the other defects regarding the statement of material facts that defendant raised. Striking the two statements of material facts at issue, however, may have the effect of requiring the Court to grant Defendant Micron Electronics Inc.'s Motion for Partial Summary Judgment Re: Statutes of Limitation and the denial of Plaintiffs' Motion for Partial Summary Judgment solely because of a violation of a local rule. The Ninth Circuit has stated that "a motion for summary judgment cannot be granted simply because the opposing party violated a local rule." *Marshall v. Gates*, 44 F.3d 722, 725 (9th Cir. 1995); see *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 950 (9th Cir. 1993). When a party violates a local rule in connection with a motion for summary judgment, the Court should consider devising appropriate sanctions short of granting summary judgment. *Marshall*, 44 F.3d at 725. Thus, the Court will permit plaintiffs to file a late response to these motions.<sup>2</sup> However, the Court will impose what it deems to be an appropriate sanction by requiring the Plaintiffs to

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<sup>2</sup>Alternatively, the Plaintiffs may seek to amend its statement of material fact so as to respond to the objections of the Defendant.

pay the fees and costs incurred by the Defendant in bringing their motions to strike.

With respect to Defendant Micron Electronics Inc.'s Motion to Strike Consents and Dismiss Claimants Destiny J. Baxter, Don Hopkins, and Camille Woodworth (Docket No. 229), the record indicates that plaintiffs would likely not oppose this motion. Dockstader Aff. of July 23, 2004 ¶ 6. Plaintiffs have not filed an opposition to this motion. In the motion to dismiss context, failure to file an opposition as required by a local rule can be a ground for dismissal. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The Court must weigh several factors before dismissal: ““(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.”” *Id.* (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). The first three factors weigh in favor of dismissal. Although public policy favors disposing of a case on its merits and the Court could impose a less drastic sanction, because the record contains some evidence that plaintiffs do not oppose the motion, the Court will grant Defendant Micron Electronics Inc.’s Motion to Strike Consents and Dismiss Claimants Destiny J. Baxter, Don Hopkins, and Camille Woodworth (Docket No. 229).

NOW WHEREFORE IT IS HEREBY ORDERED that Defendant Micron

Electronics Inc.'s Motion for Partial Summary Judgment Re: Payment of Commission Premiums for Overtime (Docket No. 179), Defendant Micron Electronics Inc.'s Motion to Strike Consents and to Dismiss Claimants (Docket No. 189), Defendant's Micron Electronics Inc.'s Motion For Partial Summary Judgment Re: Plaintiffs' Claims of Altering Employees' Timecards (Docket No. 199), Defendant Micron Electronics Inc.'s Motion to Strike Consents and Dismiss Claimants Destiny J. Baxter, Don Hopkins, and Camille Woodworth (Docket No. 229), and Plaintiffs' Motion to File Overlength Statement of Material Facts (Docket No. 258) are GRANTED.

IT IS FURTHER ORDERED that plaintiffs will have until October 20, 2004 to file a response to Defendant Micron Electronics Inc.'s Motion to Strike Plaintiffs' Statement of Material Facts Filed in Opposition to Defendant Micron Electronics Inc.'s Motion for Partial Summary Judgment Re: Statutes of Limitation (Docket No. 242) and Defendant Micron Electronics Inc.'s Motion to Strike Plaintiffs' Statement of Undisputed Facts in Support of Plaintiffs' Motion for Summary Judgment (Docket No. 266), or to amend their statements of material facts. The Court will further impose sanctions by requiring plaintiffs to pay the attorney's fees defendant incurred in connection with the filing of these motions.

DATED this 15<sup>th</sup> day of October, 2004.

  
\_\_\_\_\_  
B. LYNN WINMILL  
Chief Judge, United States District Court

United States District Court  
for the  
District of Idaho  
October 15, 2004

\* \* CLERK'S CERTIFICATE OF MAILING \* \*

Re: 1:01-cv-00244

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

✓ William H Thomas, Esq. 1-208-345-7894  
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\_\_\_\_ Chief Judge B. Lynn Winmill  
\_\_\_\_ Judge Edward J. Lodge  
\_\_\_\_ Chief Magistrate Judge Larry M. Boyle  
\_\_\_\_ Magistrate Judge Mikel H. Williams

Visiting Judges:

\_\_\_\_ Judge David O. Carter  
\_\_\_\_ Judge John C. Coughenour  
\_\_\_\_ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 10/15/4

BY:

*Pamela S. Burke*  
(Deputy Clerk)

\* \* \* COMMUNICATION RESULT REPORT ( OCT. 15. 2004 3:59PM ) \* \* \*

FAX HEADER 1: US COURTS  
FAX HEADER 2:TRANSMITTED/STORED : OCT. 15. 2004 3:55PM  
FILE MODE OPTION

FILE MODE	OPTION	ADDRESS	RESULT	PAGE
3103 MEMORY TX		12083457894	OK	6/6
		912083899040	OK	6/6

REASON FOR ERROR  
E-1) HANG UP OR LINE FALL  
F-8) NO ANSWERE-2) BUSY  
E-3) NO FACSIMILE CONNECTION

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